4 of the Statement of Claim and yet no particulars of the innuendoes alleged are given as required by the said Order 78 rule 3(1)."

On November 7, 1983, the plaintiff amended his Statement of Claim.

By relying solely on a legal innuendo, the plaintiff admits that in their natural and ordinary meaning, the words are not defamatory. No special, technical or slang meanings and no extrinsic facts and circumstances are alleged to create an innuendo.

The only evidence has been that of the plaintiff himself who testified as to what innuendo he considered the report to contain. No evidence whatever has been called to prove that there are some special meanings, facts or circumstances in this case and that there are people acquainted with them and so might understand the report in the defamatory sense alleged, and that the report was published to them. Such evidence is an essential element in a case of legal innuendo.

As the plaintiff has failed to establish any legal innuendo his claim must fail.

The plaintiff's claim is dismissed with costs.

Claim dismissed.

Solicitors: *J.B. Jeyaretnam & Co.; Godwin & Co.*

HOUSING & URBAN DEVELOPMENT CO. (PTE.) LTD. v. MAH KOK WENG & ANOR.

[D.C.A. (Wee Chong Jin C.J.) April 3, 1984]
[Singapore – District Court Appeal No. 18 of 1982]

Housing Developers – Sale and Purchase Agreement – Omission of words "or the Management Corporation established under the Land Titles (Sub-Strata) Act" in Agreement – Whether omission contravened Rule 9A(1) & (2) of Housing Developers (Amendment) Rules 1967 – Housing Developers Rules 1965.

In April 1975 HUDC sent to the Controller of Housing a draft Agreement for Sale and draft Lease for the Controller's approval in respect of its Laguna Park development which contained a clause (Clause 12) which is not prescribed in Schedule B of the Rules. On May 22, 1975 the Controller approved, with some immaterial alterations, the draft Agreement for Sale.

On March 19, 1976 HUDC entered into a Sale and Purchase Agreement with the respondents to purchase a flat in Laguna Park. Clause 12 of the Agreement of March 17, 1976, however, was not in the precise terms approved by the Controller in that the words "or the Management Corporation established under the Land Titles (Sub-Strata) Act" did not appear in Clause 12 of the March 17, 1976 Agreement.

The court was faced with two issues: (a) whether the omission by HUDC from clause 12 of the March 1976 Agreement of the words "or the Management Corporation established under the Land Titles (Sub-Strata) Act" which appear in Clause 12 of the draft Agreement for Sale approved by the Controller, prevented them from enforcing their right to payment by the respondents of the arrears of the maintenance and service fees; (b) whether on the true construction of Clause 12 of the Agreement for Sale, HUDC were only entitled to recover the maintenance and service fees for the first year of possession and not for the period between the end of the first year of possession and the date of the execution of the Lease itself.

Held: (1) the Controller did approve the incorporation in the Agreement of Sale between the parties of a provision whereby monthly maintenance and service fees of approximately $50/– were payable for the first year of possession, and whereby HUDC could revise the maintenance and service fees upon giving three months' prior notice in writing. It follows that HUDC had not contravened any of the Rules by the omission of those words from its Agreement of Sale with the respondents;

(2) the words in question in Clause 12 are unambiguous and their meaning is clear, namely, that during the period when the Purchaser is in possession of the Flat until the date of completion of the Lease which is annexed to the Agreement for Sale, he shall pay to the Vendor during the first year of possession, maintenance and service fees of approximate $50/– per month and, after the first year of possession, the said maintenance and service fees may be revised by the Vendor upon giving to the Purchaser three months' prior notice in writing of his intention to do so;

(3) the appellants were therefore entitled to judgment in respect of all unpaid maintenance and service fees.

Case referred to:

(1) *Ford* v. *Beech* (1848) 11 Q.B. 852, 866; 116 E.R. 693.

DISTRICT COURT APPEAL.

J. Grimberg (*D. Daniel* with him) for the appellants.

Tommy Neo (*Ong Mung Pang* with him) for the respondents.

Cur. Adv. Vult.

Wee Chong Jin C.J.: The Housing and Urban Development Company (Pte.) Ltd. ("HUDC" as it is more commonly known) has as its principal object to develop and maintain housing for the

middle income group. One of its earlier developments is Laguna Park which comprises five high rise blocks of flats and two blocks of walk-up apartments, construction of which began in 1975 and completed in 1977.

Housing developers are subject to The Housing Developers (Control and Licensing) Act 1965 ("the Act") which was enacted to protect the public by controlling the forms of contract into which licensed developers might enter with purchasers.

In exercise of the powers conferred by section 21 of the Act the Minister for Law and National Development made The Housing Developers Rules 1965 ("the Rules") and the Housing Developers (Amendment) Rules 1967. Rule 9A, so far as material, provides as follows:–

"9A – (1) An agreement for sale between a housing developer and a purchaser shall be ... in the case of a flat in the form prescribed in Schedule B to these Rules.

(2) No amendment, deletion or alteration to any such form shall be made except with the approval of the Controller."

Rule 11 provides as follows:–

"Any licensed developer who contravenes any of the provisions of these Rules shall be guilty of an offence and shall be liable on conviction to a fine ... or to imprisonment ..."

Section 21(2) of the Act gives power to the Minister to make rules providing for –

"(e) the conditions, which if used in any contract between a licensed housing developer ... and a purchaser, shall be void."

In April 1975 HUDC sent to the Controller of Housing a draft Agreement for Sales and draft Lease for the Controller's approval in respect of its Laguna Park development which contained a clause (Clause 12) which is not prescribed in Schedule B of the Rules. The material provisions of Clause 12 read as follows:–

"The Purchaser who has taken possession of the said flat before the date of completion of the sale and purchase herein shall pay to the Vendor a monthly maintenance and service fee of approximately $50/- per month for the first year of possession; and the Vendor or the Management Corporation established under the Land Titles (Sub-Strata) Act shall be at liberty to revise the maintenance and service fees herein upon giving three months' prior notice in writing for the Vendor ..."

On May 22, 1975 the Controller approved, with some immaterial alterations, the draft Agreement for Sale.

On March 19, 1976 HUDC entered into a Sale and Purchase Agreement with the respondents, a married couple, to purchase a flat in Laguna Park. Clause 12 of the Agreement of March 17, 1976 however was not in the precise terms approved by the Controller in that the words "or the Management Corporation established under the Land Titles (Sub-Strata) Act" do not appear in Clause 12 of March 17, 1976 Agreement.

The respondents took possession of the flat in August 1977 and in January 1978 HUDC requested the respondents to pay maintenance and service fees at the rate of $50/– per month with effect from January 1, 1978. The respondents have paid the maintenance and service fees for the months from February to November 1978 and are in arrears of $100/– being the unpaid fees for January 1978 and December 1978. The respondents have also paid the maintenance fees for the year 1979 but have not paid any maintenance fees from January 1980 onwards.

The main issue in this appeal is whether the omission by HUDC from Clause 12 of March 12, 1976 Agreement of the words "or the Management Corporation established under the Land Titles (Sub-Strata) Act" which appear in Clause 12 of the draft Agreement for Sale approved by the Controller, prevents them from enforcing their right to payment by the respondents of the arrears of the maintenance and service fees.

The respondents' case is that by deviating from the approved Clause 12, HUDC have contravened Rule 9A(1) and (2) of the Rules as amended and by Rule 11 are guilty of a statutory offence so that the court will not enforce the agreement relating to the maintenance and service fees which is made illegal by the Rules.

In my opinion the fallacy in the respondents' case is the assumption that on the facts HUDC have contravened Rule 9A(1) and (2) and are guilty of an offence punishable under Rule 11. In the first place, Rule 9A(1) of the Rules as amended obliges all agreements for sale of a flat between a housing developer and a purchaser to be in the form prescribed in Schedule B. If a housing developer desires to deviate in any manner from the form prescribed in Schedule B, Rule 9A(2)

enables him to do so provided he has the approval of the Controller of Housing.

The form prescribed in Schedule B contains no clause providing for payment of maintenance and service fees by a purchaser who has taken possession of a flat before completion. In the present case the Controller's approval was obtained for such a clause (Clause 12) to be included in the agreement for sale.

The facts are that although the agreement for sale between HUDC and the respondents were not on all fours with the form prescribed in Schedule B to the Rules, it was in the form approved by the Controller except the omission of the words "or the Management Corporation established under the Land Titles (Sub-Strata) Act" which appear in Clause 12 of the approved form. The respondents have not alleged or proved that there was in fact "a Management Corporation established under the Land Titles (Sub-Strata) Act" in respect of the Laguna Park development. In my opinion, it is clear that the Controller did approve the incorporation in the Agreement of Sale between the parties of a provision whereby monthly maintenance and service fees of approximately $50/– were payable for the first year of possession, and whereby HUDC could revise the maintenance and service fees upon giving three months' prior notice in writing.

It follows, in my opinion, that HUDC had not contravened any of the provisions of the Rules by the omission of those words from its Agreement of Sale with the respondents and on the facts of the present case the principle that "no system of jurisprudence can with reason include amongst the rights which it enforces rights directly resulting to the person asserting them from the crime of that person" does not apply.

The second issue is whether on the true construction of Clause 12 of the Agreement for Sale, HUDC were only entitled to recover the maintenance and service fees for the first five years of possession and not for the period between the end of the first year of possession and the date of the execution of the Lease itself.

The material words of Clause 12 read as follows:–

"The Purchaser who has taken possession of the said Flat before the date of completion of the lease herein shall pay to the Vendor a maintenance and service fees of approximately $50/– per month payable on the 1st day of each and every calendar month for the first year of possession; and the Vendor shall be at liberty to revise the maintenance and service fees herein upon giving 3 months' prior notice in writing to the Purchasers ..."

The respondents' case is that the Clause is ambiguous and the *contra proferentum* rule is applicable. Their contention is that the clause is ambiguous as it could mean either that the maintenance and service fees of approximately S$50/– per month *and* any revised fees were payable *only* during the first year of possession or could mean that the maintenance and service fees of approximately $50/– per month were payable during the first year of possession but thereafter could be revised upon three months' prior notice in writing to the purchaser.

In approaching the task of construction of the terms of a written agreement "the common and universal principle ought to be applied; namely, that an agreement ought to receive that construction which its language will admit, and which will best effect the intention of the parties, to be collected from the whole of the agreement, and that greater regard should be had to the clear intention of the parties than to any particular words which they may have used in the expression of their intent" (see *Ford* v. *Beech*[1]). And, as no contract is made in a vacuum, in construing a term in a written agreement, a court must always have regard to its commercial purpose and the factual background against which it was made.

Applying these principles, in the present case it is plain that the parties intended under Clause 12 that during the first year of possession under the agreement for sale the maintenance and service fees payable would be "approximately $50/– per month" and that thereafter the fees could be revised by the Vendor (HUDC) upon his giving three months' prior notice in writing to the Purchasers (the respondents).

Furthermore, in my opinion, the words in question in Clause 12 are unambiguous and their meaning is clear, namely, that during the period when the Purchaser is in possession of the Flat until the date of completion of the Lease which is annexed to the Agreement for Sale, he shall pay to the Vendor during the first year of possession, maintenance and service fees of approximately $50/– per month and, after the first year of possession, the said maintenance and service fees may be revised by the Vendor upon giving to the

Purchaser three months' prior notice in writing of his intention to do so.

Accordingly, the appeal is allowed with costs here and in the court below. The appellants are entitled to judgment in respect of all unpaid maintenance and service fees.

Appeal allowed.

Solicitors: *Boswell, Hsieh & Lim; Mak, Ong & Partners.*

A MALAYSIAN REPORTS

SYED ABU BAKAR BIN AHMAD v. PUBLIC PROSECUTOR

B **[F.C. (Lee Hun Hoe C.J. (Borneo), Abdul Hamid & Syed Agil Barakbah F.JJ.) November 7 to 9 & December 20, 1983]**

[Kuching – Federal Court Criminal Appeal No. 45 of 1982]

C *Criminal Law & Procedure – Criminal breach of trust – Failure to critically assess and analyse prosecution evidence – Misdirection – Failure of justice – Penal Code, 409.*

Evidence – Expert evidence – Accomplice evidence – Evidence Act 1950, s. 45.

D

In this case the learned trial judge found that the appellant as Director of National Bureau of Investigation, Sarawak was a public servant and in that capacity he was entrusted with dominion over moneys belonging to the Government of Malaysia and was the operator of the funds known as the Secret Service Funds (SSF). It was in respect of moneys from such fund in the amounts stated in both of
E the charges that the learned judge found the appellant to have committed criminal breach of trust.

In regard to the first limb of the first charge, the learned judge found that a sum of $200/- was handed to A.S.P. Ibrahim then attached to NBI Sibu whereas the payment voucher showed there was a payment of $300/-. The appel-
F lant claimed he paid $300/- to Sgt. Paou who was sent to collect the money. The learned trial judge found that the words "tiga ratus sahaja" and the figure $300/- was not in the handwriting of Sgt. Paou but appeared to come from the same pen used by the appellant to sign his name and write down the receipt number.

G In regard to the second limb, the learned judge found that certain payments of rewards were not received by the persons to whom they are alleged to have been paid. Payment vouchers were signed by the appellant and blank receipts were prepared which were signed by an Assistant Director Poh of Kuching.

H The second charge related to a payment to A.S.P. Daniel Chai of $500/-, which A.S.P. Daniel Chai said he never received. The appellant stated that Daniel Chai had asked for the money to pay informers but as he was in a hurry no signature was taken. Subsequently a temporary receipt was prepared by the appellant. He then contacted Daniel Chai for the refund of the money and eventually
I received $500/- back. The learned trial judge disbelieved the appellant and his witnesses and found the appellant guilty. The appellant appealed.

Held: (1) it is a settled principle that while a judge who sits alone is entitled to weigh all the evidence, to put his magnifying glass to determine the probabilities and form his own opinion or judgment, it would be erroneous for